

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 26, 2011

In the Matter of K.A.W., Minor.

No. 301470
Wayne Circuit Court
Family Division
LC No. 10-491689

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

The respondent-mother appeals as of right from the trial court order terminating her parental rights to KAW (DOB 12-22-09) under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (i), and (j). Respondent's rights to KAW were terminated based on the 2009 termination of respondent's rights to three older children for failure to protect them from physical and sexual abuse. On appeal, respondent challenges only the factual support for the court's decision. At least one of the statutory grounds for termination was established by clear and convincing evidence and the evidence supported the court's conclusion that termination was in KAW's best interest. Accordingly, we affirm.

I. BACKGROUND

On February 23, 2009, the Family Division of the Washtenaw Circuit Court terminated respondent's parental rights to her three older children, then aged eight months to 13 years, pursuant to MCL 712A.19b(3)(b)(ii) (failure to prevent physical or sexual abuse to child) and (j) (reasonable likelihood of harm if child returned to the parent). The children were removed from respondent's care and her rights were terminated because she failed to protect her children from a decade-long string of violent, mentally disturbed and sexually abusive live-in boyfriends. As a result of respondent's extremely impulsive and poor romantic decisions, her oldest daughter (AF) was sexually abused by three different men. Respondent's son (DS) was physically abused and was forced to consume his own excrement. On one occasion, respondent refused to seek medical treatment for DS's burn injury because she did not want to be accused of abusing her child. The children all witnessed one of respondent's boyfriends commit atrocious acts of animal cruelty against the family's pets. The older two children also witnessed two of respondent's boyfriends physically abuse her. AF was severely traumatized by the extensive abuse and attempted to commit suicide at the age of 11. Respondent apparently minimized the psychological damage to her children as she prematurely terminated AF's course of therapy and continued to enter romantic relationships with dangerous men. This Court affirmed the

Washtenaw Circuit Court's termination decision in *In re Flores/Schultz Minors*, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2009 (Docket No. 290914).

While the Washtenaw County termination proceedings were pending, respondent conceived KAW with Jeremy Webb. Webb was dating respondent when her older children were removed from her care. Webb did not know the atrocity of the allegations involved in that termination proceeding until after KAW was born, and he promptly ended his relationship with respondent as a result. The DHS placed KAW in Webb's care with supervised visitation for respondent and filed a petition to terminate respondent's parental rights to KAW based on the termination of her rights to her older children. The DHS removed KAW from Webb's care when she was only four months old because she had several fractured bones. Medical experts testified that KAW's injuries were consistent with abuse, but it was unclear who caused the injuries.

At the termination trial in the current case, respondent testified at length regarding her past history with men and her current attempts to improve her life through counseling, psychiatric treatment and parenting classes. However, neither respondent's counselor nor psychiatrist had an opportunity to observe respondent with her children and, therefore, could not determine whether respondent was ready to parent responsibly. The court also heard testimony about the Washtenaw County termination proceeding and KAW's injuries. Ultimately, the court determined that the DHS had not established by clear and convincing evidence that Webb had caused KAW's injuries. Accordingly, the court dismissed the termination petition in relation to Webb.

In relation to respondent, however, the court terminated her parental rights under the following provisions of MCL 712A.19b(3):

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future.

* * *

(g) The parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be

able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

II. ANALYSIS

Pursuant to MCL 712A.19b(3), a trial court “may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests,” the court is required by law to order termination. MCL 712A.19b(5). This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established and its ruling that termination is in the children’s best interests. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A decision “is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

The trial court did not clearly err in finding that the DHS established grounds for termination by clear and convincing evidence under MCL 712A.19b(3)(b)(ii) (failure to prevent abuse of child’s siblings), (g) (without regard to intent unable to provide proper care and custody within a reasonable time), and (j) (reasonable likelihood of harm to child if returned to the parent). Respondent’s parental rights to KAW’s three older siblings were terminated less than a year before KAW’s birth due to respondent’s failure to protect them from physical and sexual abuse perpetrated by respondent’s live-in partners. Respondent had the opportunity to prevent the abuse but either chose to ignore it or was inexplicably unaware of the horrifying events that occurred in her household. Respondent repeatedly exposed her older children to new dangers by allowing a succession of men to move into her home and allowing them unsupervised time with her children. During that time, respondent allowed the children to witness domestic violence against her, failed to seek proper medical and psychiatric treatment for her children, and failed to report that one of her boyfriends had sexually abused AF because it involved only “fondling.” Further, on more than one occasion, respondent handled the criminal mistreatment of her children by simply admonishing the offending boyfriend. Based on respondent’s decade-long pattern of choosing romance over her children’s safety, the trial court could determine that respondent would be unable to provide proper care and custody for KAW within a reasonable time and that KAW faced a likely chance of harm if returned to her mother’s care. While respondent underwent significant amounts of therapy to address her parenting issues, neither her

counselor nor her psychiatrist could form an opinion whether respondent could protect KAW. Considering the severity of the abuse to her older children and the length of time that respondent allowed the abuse to continue, the trial court reasonably found that respondent's "self-improvements" were insufficient to ensure KAW's present or future safety.

The trial court erred, however, in terminating respondent's parental rights based on MCL 712A.19b(3)(b)(i) (parent's act caused the physical injury or physical or sexual abuse of a sibling). There is no evidence that respondent ever personally abused her children in any way, only that she failed to protect them from the abuse of others. Similarly, there is no evidence that respondent caused KAW's injuries.

The trial court also erred in terminating respondent's rights based on MCL 712A.19b(3)(i). The DHS must establish two prongs to terminate a parent's rights under this provision: 1) the parent's rights to a sibling have been terminated due to "serious and chronic neglect or physical or sexual abuse," and 2) "prior attempts to rehabilitate the parents have been unsuccessful." The DHS has made no attempt to rehabilitate respondent in either the current termination proceedings or the Washtenaw County proceedings related to her older children. The DHS recommended permanent custody in both actions and, therefore, never prepared a service plan geared toward reunification. Respondent's attempts to improve her life through counseling and parenting classes were completely self-motivated. This Court need not reverse the termination decision based on these two erroneous grounds. A trial court need only find one statutory ground for termination to support its judgment, MCL 712A.19b(3), and this trial court properly found three.

We further affirm the trial court's determination that terminating respondent's parental rights was in KAW's best interests. MCR 3.977(K); MCL 712A.19b(5). The child was removed from respondent's custody when she was only two weeks old. Although respondent's personal interaction with the infant was appropriate, respondent's utter failure to protect her older children from abuse was too significant to ignore. The brief period of time since respondent lost her right to parent her older children is also compelling. Given the circumstances, the trial court did not clearly err in terminating respondent's parental rights to KAW.

Affirmed.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher